

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 281

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING CONDITIONS FOR ACCESS
BY A TELECOMMUNICATIONS PROVIDER ON COMMERCIAL PRIVATE PROPERTY
FOR USE BY A TENANT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the New Mexico
Telecommunications Act is enacted to read:

"~~[NEW MATERIAL] PURPOSES-- DISCRIMINATION PROHIBITED--
CONDITIONS-- ENFORCEMENT. --~~

A. The purposes of this section are to:

- (1) provide for the nondiscriminatory
treatment of public telecommunications service providers by
owners of commercial private properties upon tenants' requests;
- (2) promote the rights of consumers of public
telecommunications services;

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1 (3) encourage competition for public
2 telecommunications services; and

3 (4) encourage investment in telecommunications
4 infrastructure.

5 B. When carrying out the purposes of this section,
6 this section shall be liberally interpreted.

7 C. A commercial private property owner shall not:

8 (1) prevent or otherwise interfere with the
9 installation of a telecommunications service facility by a
10 public telecommunications service provider for use by a tenant
11 on the owner's commercial private property;

12 (2) discriminate in the terms, conditions or
13 compensation imposed for the installation of a
14 telecommunications service facility by a public
15 telecommunications service provider or use of such facility by
16 a tenant on the owner's commercial private property;

17 (3) demand or accept an unreasonable payment
18 from a tenant or a public telecommunications service provider
19 for allowing the provider access to the owner's commercial
20 private property; or

21 (4) discriminate in favor of or against a
22 tenant, including rental charge discrimination, because of the
23 tenant's choice of public telecommunications service provider
24 from which the tenant receives a public telecommunications
25 service.

1 D. A commercial private property owner may:

2 (1) impose a condition on the public
3 telecommunications service provider that is reasonably
4 necessary to protect:

5 (a) the safety, security, appearance or
6 condition of the commercial private property; or

7 (b) the safety or convenience of other
8 persons;

9 (2) impose a reasonable limitation on the time
10 at which the public telecommunications service provider may
11 have access to the commercial private property to install and
12 perform routine maintenance on a telecommunications service
13 facility; provided, however, that the public telecommunications
14 service provider shall have continual, uninterrupted, twenty-
15 four-hour-per-day access to perform repairs to a
16 telecommunications service facility in the event of a service
17 interruption;

18 (3) impose a reasonable limitation on the
19 number of public telecommunications service providers that have
20 access to the owner's commercial private property, if the owner
21 can demonstrate a space constraint that requires the
22 limitation;

23 (4) require the tenant or the public
24 telecommunications service provider to agree to indemnify the
25 owner for damage to the owner's commercial private property

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1 caused by the installation, operation or removal of a
2 telecommunications service facility;

3 (5) require the tenant or the public
4 telecommunications service provider to bear the cost of the
5 installation, operation or removal of a telecommunications
6 service facility; and

7 (6) require the public telecommunications
8 service provider to pay compensation for access to and use of
9 the owner's commercial private property that is reasonable and
10 does not discriminate among providers.

11 E. Notwithstanding any other law, the commission
12 has the power and authority to enforce this section.

13 F. In considering whether compensation demanded by
14 a commercial private property owner is reasonable, the
15 commission shall consider the costs to the property owner of
16 permitting installation of a telecommunications service
17 facility on the owner's property.

18 G. For purposes of this section:

19 (1) "commercial private property" is real
20 property and improvements or any portion thereof, but
21 "commercial private property" does not include property owned
22 by a governmental agency or property used as a permanent
23 residence;

24 (2) "private property owner" means

25 (a) a person other than a governmental

1 agency holding fee simple title to real property and
2 improvements to commercial private property; or

3 (b) an agent, representative, employee
4 or assignee of the fee simple title holder in matters related
5 to the use of such commercial private property;

6 (3) "public telecommunications service
7 provider" means a person that provides public
8 telecommunications service and the agents, subcontractors and
9 representatives of that provider; and

10 (4) "telecommunications service facility"
11 means all property used in connection with the provision of
12 telecommunications service.

13 H. Appeals from any order made by the commission
14 pursuant to this section shall be subject to review by appeal
15 to the district court pursuant to the provisions of Section
16 39-3-1.1 NMSA 1978. Any person or entity whose rights may be
17 directly affected by the appeal may appear and become a party,
18 or the district court may, upon proper notice, order any person
19 or entity to be joined as a party. "